

The other case (Civil No. SA-16-CV-257-OG) had already been litigated to a final judgment in this Court and a subsequent appeal to the Fifth Circuit (“*Stringer I*”). The Fifth Circuit held this Court lacked subject matter jurisdiction in *Stringer I*, and remanded with instructions to dismiss the Plaintiffs’ claims in that case for lack of standing. *Stringer v. Whitley*, 942 F.3d 715, 725 (5th Cir. 2019).

Upon remand, several new parties requested to join *Stringer I* as Intervenor, despite the fact this Court had no subject matter jurisdiction in the case. See Docket No. 124. Instead of dismissing *Stringer I* and entertaining a motion for new parties to join the new *Stringer II* litigation, this Court joined the new parties as Intervenor in *Stringer I* and then consolidated that older case with the new *Stringer II* case. See Docket Nos. 135, 136. The Court then dismissed the Plaintiffs’ claims in *Stringer I* from the newly consolidated case. See Docket No. 139.

II. ARGUMENT & AUTHORITIES

Rule 21 authorizes a court to “sever any claim against a party.” Fed. R. Civ. P. 21. “Severance is appropriate where it will serve the ends of justice and further the prompt and efficient disposition of the litigation.” *Robinson v. RWLS, LLC*, No. 5-16-CV-0201-OLG-RBF, 2018 WL 7198157, at *1 (W.D. Tex. May 23, 2018).

Here, justice requires the severance of *Stringer I* from *Stringer II*, for the simple reason that this Court had no jurisdiction over *Stringer I*. On November 13, 2019, the Fifth Circuit held that the Plaintiffs in *Stringer I* had no standing. *Stringer*, 942 F.3d at 723, 725. Accordingly, this Court was without subject matter jurisdiction in *Stringer I*. After it was established that the Court was without jurisdiction, the only proper action was to dismiss *Stringer I*. See *Steel Co. v. Citizens*

lack of standing, failure to comply with NVRA notice provisions, or any other reason) and failure to state a claim upon which relief can be granted.

for a Better Env't, 523 U.S. 83, 94 (1998) (“Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868))); *Stamper v. Baskerville*, 724 F.2d 1106, 1108 (4th Cir. 1984) (“Compliance with an order to relinquish jurisdiction necessarily precludes the lower court from taking any further action other than dismissal, for to do so would involve retaining jurisdiction.”).

As the Fifth Circuit has explained, “[t]he mandate rule requires a district court on remand to effect our mandate and to do nothing else.” *Gen. Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007). Accordingly, *Stringer I* must be dismissed for lack of jurisdiction, and any new parties and/or new claims must be considered only as part of new litigation (e.g., *Stringer II*); *see also* Docket No. 133 (Defendants’ Response in Opposition to Motion to Intervene)

III. CONCLUSION & PRAYER FOR RELIEF

For all the foregoing reasons, this Court should sever Civil No. SA-16-CV-257-OG from Civil No. SA-20-CV-46-OG, dismiss Civil No. SA-16-CV-257-OG for lack of subject matter jurisdiction, and proceed with such parties and claims that are or may properly become part of Civil No. SA-20-CV-46-OG. Accordingly, Defendants request this Court to grant this Motion to Sever and enter the attached proposed order.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On January 24, 2020, counsel for Defendants conferred with counsel for Plaintiffs and for Intervenor-Plaintiffs, and counsel for Plaintiffs and Intervenor-Plaintiffs indicated that they were opposed.

/s/ Anne Marie Mackin
Anne Marie Mackin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via the Court's CM/ECF system on January 27, 2020, to all counsel of record.

/s/ Anne Marie Mackin

Anne Marie Mackin